

Fifty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1217

Introduced by

Representatives Wald, Grande

Senators Krebsbach, Wardner

1 A BILL for an Act to amend and reenact subsection 3 of section 54-52-01, sections 54-52.6-01,  
2 54-52.6-02, 54-52.6-03, 54-52.6-06, and subsection 2 of section 54-52.6-09 of the North  
3 Dakota Century Code, relating to eligibility to participate in and payment of administrative  
4 expenses of the defined contribution retirement plan; to authorize the borrowing of funds; to  
5 provide an appropriation; to provide an effective date; and to provide for application.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the 1999  
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 3. "Eligible employee" means all permanent employees who meet all of the eligibility  
10 requirements set by this chapter and who are eighteen years or more of age, and  
11 includes appointive and elective officials who elect to remain members of the  
12 retirement system; provided, that judges of the supreme and district courts eligible  
13 under section 54-52-02.3 and appointed officials who elect to participate under  
14 section 54-52-02.5 are eligible employees and shall participate in the public  
15 employees retirement system. Eligible employee does not include ~~nonclassified~~  
16 state employees who elect to become members of the retirement plan established  
17 under chapter 54-52.6 ~~but does include employees of the judicial branch and~~  
18 ~~employees of the board of higher education and state institutions under the~~  
19 ~~jurisdiction of the board.~~

20 **SECTION 2. AMENDMENT.** Section 54-52.6-01 of the 1999 Supplement to the North  
21 Dakota Century Code is amended and reenacted as follows:

22 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
23 requires:

24 1. "Board" means the public employees retirement system board.

2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
3. "Eligible employee" means a permanent state employee, except a supreme or district court judge under the public employees retirement system or an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 13 of section 15-10-17, who is eighteen years or more of age ~~and who is in a position not classified by the central personnel division.~~
4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means the state of North Dakota.
6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.
7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

**SECTION 3. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-02. Election.**

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2002, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. An eligible employee may not elect to participate in the defined contribution retirement plan until the eligible employee has attended an education program developed by the board. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. ~~January 1, 2000~~ December 13, 2002. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight ~~December 31, 1999~~ 2002; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, ~~2000~~ 2003; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective ~~December 31, 1999~~ 2002. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after ~~December 31, 1999~~ September 30, 2002, may make an election at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter.
2. If an individual who is a deferred member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2002, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to

1 remain a member of the public employees retirement system or if eligible to  
2 participate in the defined contribution retirement plan established under this  
3 chapter to terminate membership in the public employees retirement system and  
4 become a participating member in the defined contribution retirement plan  
5 established under this chapter. An eligible employee may not elect to participate  
6 in the defined contribution retirement plan until the eligible employee has attended  
7 an education program developed by the board. An election made by a deferred  
8 member under this section is irrevocable. The board shall accept written elections  
9 under this section from a deferred member during the period beginning on the date  
10 of the individual's reemployment and ending upon the expiration of sixty days after  
11 the date of that reemployment. A deferred member who makes and files a written  
12 election to remain a member of the public employees retirement system retains all  
13 rights and is subject to all conditions as a member of that retirement system. A  
14 deferred member who does not make a written election or who does not file the  
15 election during the period specified in this section continues to be a member of the  
16 public employees retirement system. A deferred member who makes and files a  
17 written election to terminate membership in the public employees retirement  
18 system ceases to be a member of the public employees retirement system  
19 effective on the last day of the payroll period that includes the date of the election;  
20 becomes a participating member in the defined contribution retirement plan under  
21 this chapter effective the first day of the payroll immediately following the date of  
22 the election; and waives all of that person's rights to a pension, an annuity, a  
23 retirement allowance, insurance benefit, or any other benefit under the public  
24 employees retirement system effective the last day of the payroll that includes the  
25 date of the election. This section does not affect any right to health benefits or  
26 retiree health benefits to which the deferred member may otherwise be entitled.

27 3. ~~An employee who elects to participate in the retirement plan established under this~~  
28 ~~chapter must remain a participant even if that employee returns to the classified~~  
29 ~~service.~~

30 4. After consultation with its actuary, the board shall determine the method by which  
31 a participating member or deferred member may make a written election under this

section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

- ~~5-~~ 4. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.

**SECTION 4. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for ~~employees electing to transfer prior to January 1, 2000~~ persons employed before October 1, 2002, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, ~~2000~~ 2003, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer ~~and employee~~ contributions made ~~pursuant to sections 54-52-05 and 54-52-06~~, less vested employer contributions made pursuant to section 54-52-11.1, plus interest at the rate of one-half of one percent less than the

actuarial interest assumption at the time of the election plus the employee account balance.

The board shall calculate the amount to be transferred for persons employed after ~~December 31, 1999~~ September 30, 2002, using only the formula contained in subsection 2.

**SECTION 5. AMENDMENT.** Section 54-52.6-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-06. Administrative expenses - Continuing appropriation.** The administrative expenses of the plan must be paid by the participating members in a manner determined by the board. The board ~~or~~ and vendors contracted for by the board may charge reasonable administrative expenses and deduct those expenses from the contribution to a participating member's account in the defined contribution retirement plan established under this chapter, from the moneys already in a participating member's account, or from both. In determining reasonable administrative expenses, the board may include an amount necessary to implement an appropriate investment education program. The board shall place any money deducted by the board in an administrative expenses account with the state treasurer. The board may also use funds from the payroll clearing account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account and the administrative expenses account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

**SECTION 6. AMENDMENT.** Subsection 2 of section 54-52.6-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The employer shall contribute an amount equal to four and twelve hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Of the amount contributed by the employer on behalf of an employee first electing to participate in this program after June 30, 2001, the board may withhold up to six hundredths percent of the monthly salary or wage of the participating member for general administrative expenses, which moneys must be deposited into the administrative expenses account. The employer shall pay monthly such

1 contribution into the participating member's account from its funds appropriated for  
2 payroll and salary or any other funds available for such purposes. If the employer  
3 fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars  
4 and, as interest, one percent of the amount due for each month of delay or fraction  
5 thereof after the payment became due.

6 **SECTION 7. AUTHORITY TO BORROW FUNDS.** The public employees retirement  
7 system board may borrow up to \$250,000 from the Bank of North Dakota for the purpose of  
8 defraying the administrative expenses of the defined contribution retirement program until such  
9 time as there are sufficient assets in that program to pay off any loan and support the  
10 administrative expenses of the program. The term of the loan may not be longer than thirteen  
11 years. If requested by the public employees retirement system board, the Bank of North  
12 Dakota shall make any loan, at a rate agreed to by the parties.

13 **SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the  
14 administrative expense account created by section 54-52.6-06 and the payroll clearing account  
15 created by section 54-52.3-03, in the state treasury, the retirement fund, and the loan  
16 authorized by section 7 of this Act, not otherwise appropriated, the sum of \$250,000, or so  
17 much of the sum as may be necessary, to the public employees retirement system board for  
18 the purpose of administering this chapter, for the biennium beginning July 1, 2001, and ending  
19 June 30, 2003. The public employees retirement system board is authorized two additional  
20 full-time equivalent positions to implement this Act. The transaction costs experienced by the  
21 fund in liquidating securities to transfer to the defined contribution program on behalf of  
22 employees electing to transfer to that program must be reimbursed to the retirement fund in the  
23 same manner as contributions to the fund.

24 **SECTION 9. EFFECTIVE DATE.** Sections 5, 6, 7, and 8 of this Act become effective  
25 July 1, 2001, and sections 1, 2, 3, and 4 of this Act become effective July 1, 2003.

26 **SECTION 10. APPLICATION OF ACT.** This Act does not apply to nonclassified  
27 employees who did not elect to transfer to the defined contribution retirement plan within the  
28 timeframe provided by section 54-52.6-02 as that section was in effect on June 30, 2001.